SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 769

QUEENSIDE HILLS REALTY CO., INC., APPELLANT,

vs.

WILLIAM WILSON, AS COMMISSIONER OF HOUSING AND BUILDINGS OF THE CITY OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

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[fol. 1]

IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

QUEENSIDE HILLS REALTY CO. INC., Plaintiff-Appellant,

against

WILLIAM WILSON, as Commissioner of Housing and Buildings of the City of New York, Defendant-Respondent

STATEMENT UNDER RULE 234

This is an appeal from a resettled order and judgment of Special Term, New York County, granting defendant's motion for judgment on the pleadings, and dismissing the complaint in an action for an injunction and a declaratory judgment.

The action was commenced by the service of a summons and complaint on July 12, 1944.

Issue was joined by the service of an answer on October 14, 1944.

George G. Lake, Esq., appeared for the plaintiff. Ignatius M. Wilkinson, Esq., Corporation Counsel for the City of New York, appeared for the defendant. There has been no change of parties or attorneys.

[fol. 2] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

QUEENSIDE HILLS REALTY CO. INC., Plaintiff,

against

WILLIAM WILSON, as Commissioner of Housing and Buildings of the City of New York, Defendants

NOTICE OF APPEAL FROM JUDGMENT

SIRS:

Please take notice that the plaintiff hereby appeals to the Appellate Division of the Supreme Court for the First

Judicial Department from the judgment entered herein on December 19, 1944, dismissing the complaint herein.

Dated, New York, December 20, 1944.

Yours, etc., George G. Lake, Attorney for Plaintiff, Office & P. O. Address, 60 East 42nd Street, Borough of Manhattan, City of New York.

To Ignatius M. Wilkinson, Esq., Corporation Counsel, Attorney for Defendant, Office & P. O. Address, Municipal Building, Borough of Manhattan, City of New York. Archibald R. Watson, Clerk of the above Court.

[fol. 3] IN SUPREME COURT OF NEW YORK

JUDGMENT APPEALED FROM

The defendant having moved for judgment on the pleadings dismissing the complaint, and an order having been duly entered herein on or about the 26th day of October 1944 as resettled by an order entered on or about the 13th day of December 1944 granting the motion and dismissing the complaint,

Now on motion of Ignatius M. Wilkinson, Corporation Counsel, attorney for defendant, it is

Adjudged that the complaint be and the same hereby is dismissed.

Dated, December 19, 1944.

Archibald R. Watson, Clerk.

[fol. 4] IN SUPREME COURT OF NEW YORK

NOTICE OF APPEAL FROM RESETTLED ORDER

SIRS:

Please take notice that plaintiff hereby appeals to the Appellate Division of the Supreme Court for the First Judicial Department from the resettled Order and Judgment of Mr. Justice Walter, dated December 12, 1944 and filed herein on December 12, 1944, granting the application of

defendant for Judgment on the pleadings and dismissing the complaint.

Dated, New York, December 19, 1944.

Yours, etc., George G. Lake, Attorney for Plaintiff, Office & P. O. Address, 60 East 42nd Street, Borough of Manhattan, City of New York.

To Ignatius M. Wilkinson, Esq., Corporation Counsel, Attorney for Defendant, Office & P. O. Address, Municipal Building, Borough of Manhattan, City of New York. Archibald R. Watson, Clerk of the above Court.

[fol. 5] In Supreme Court of New York, County of New York, Special Term—Part III

Resettled Order Appealed From—December 12, 1944

Present: Hon. Carroll G. Walter, Justice

Upon the annexed consent and on motion of Ignatius M. Wilkinson, Corporation Counsel, attorney for defendant, it is

Ordered that the order entered herein in the office of the Clerk of the County of New York on the 26th day of October, 1944, be and the same hereby is resettled so as to read as follows:

"New York Supreme Court, County of New York, Special Term—Part III

Index Number 17442—Year 1944

Present: Hon. Carroll G. Walter, Justice

Queenside Hills Realty Co. Inc., Plaintiff,

against

William Wilson, as Commissioner of Housing and Buildings of the City of New York, Defendant

[fols. 6-8] The following papers numbered 1 to 8 read on motion (Argued, Decision Reserved) this 25th day of October, 1944.

Motion Calendar No. 304

Papers Numbered

Notice of Motion and Pleadings annexed and Exhibits . . . . . 1 to 8

Upon the foregoing papers this motion by defendant for judgment dismissing the complaint is granted and the Clerk is directed to enter judgment accordingly.

Dated, October 26, 1944.

Enter.

C. G. W., J. S. C."

Filed Dec. 12, 1944, New York County Clerk's Office.

Enter.

C. G. W., J. S. C.

We hereby consent to the entry of the foregoing order.

Dated, December 7, 1944.

George G. Lake, Attorney for Plaintiff. Ignatius M. Wilkinson, Corporation Counsel, Attorney for Defendant.

[fol. 9] IN SUPREME COURT OF NEW YORK

NOTICE OF MOTION FOR JUDGMENT ON THE PLEADINGS

SIR:

Please Take Notice, that upon the complaint and the answer herein, true copies of which are hereto annexed, the undersigned will move at Special Term, Part III, of the Supreme Court, in and for the County of New York, at the County Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 20th day of October, 1944, at 10 A. M., or as soon thereafter as counsel can be heard, for judgment on the pleadings, dismissing the complaint herein, and for such other and further relief as may be proper.

Dated, N. Y., October 13th, 1944.

Yours, etc., Ignatius M. Wilkinson, Corporation Counsel, Attorney for Defendant, Office & P. O. Address, Municipal Building, Borough of Manhattan, City of New York.

To: George G. Lake, Esq., Attorney for Plaintiff, 38 Park Row, New York, N. Y.

[fol. 10] In Supreme Court of New York, County of New York

Queenside Hills Realty Co. Inc., Plaintiff,

against

William Wilson, as Commissioner of Housing and Buildings of the City of New York, Defendant

Summons

To the Above Named Defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, July 10th, 1944.

George G. Lake, Attorney for Plaintiff, Office & P. O. Address, 38 Park Row, Borough of Manhattan, City of New York.

[fol. 11] In Supreme Court of New York

Complaint

Plaintiff, by George G. Lake, its attorney, complaining of the defendant, respectfully shows:

For a First Cause of Action:

1. That at all times hereinafter mentioned, plaintiff was and still is a domestic corporation.

2. That at all times hereinafter mentioned, defendant was and still is Commissioner of Housing and Buildings of the City of New York.

3. That at all times hereinafter mentioned, plaintiff was and still is the owner and operator of a lodging house known as the Clover Hotel, at premises Numbers 312-314 Bowery, Borough of Manhattan, New York City.

4. That the building in which said lodging house is conducted is a four story and cellar brick building, which was built in the year 1940 and which occupies a plot having a frontage of approximately fifty feet on the Bowery and having depth of approximately one hundred feet on each side.

5. That on January 15, 1941, defendant, by the then Borough Superintendent of the Borough of Manhattan, Chester W. Cambell, issued to plaintiff, Certificate of Occupancy #27234, covering said premises, which are Lot 75 in Block 521 on the land map of the County of New York, which certificate of occupancy certified that said building known as Number 312-14 Bowery, conformed to the require-[fol. 12] ments of the Building Code, and all other laws, including the Multiple Dwelling Law, applicable to said building. That said building in fact did and still does comply with the Multiple Dwelling Law, the Administrative Code of the City of New York, and all other laws and regulations applicable thereto.

6. That said building at all times mentioned herein, was and still is in fact in all respects, built in accordance with the latest and most approved methods of construction; that said building is in every respect safe and proper for occupancy as a lodging house.

7. That said building contains only open dormitories and has no cubicles; that the first tier of beams in said building is fireproof; that said building is equipped with an open circuit fire alarm system throughout the building; that said building is equipped with a completely enclosed fireproof stair exit, as well as a fire escape; that said building contains a fireproof passageway from the rear yard of said building to the street; that said building has constant watchman service, and that said building does not and has not at any time constituted a fire hazard or a danger to the occupants thereof, or a public nuisance.

8. That prior to the year 1929 there were many old buildings in the City of New York, which were used as lodging houses.

9. That prior to the year 1929 many buildings in the City of New York used as multiple dwellings, contained inadequate provisions for light and air, and insufficient protec-

tion against, and defective provision for, escape from fire, and improper sanitation.

[fol. 13] 10. That by reason of said facts, the Legislature of the State of New York, in the year 1927, created a Commission for the purpose of investigating conditions in multiple dwellings. That said Commission held lengthy hearings, heard witnesses on the subject, investigated the same, and duly made a report to said Legislature thereon.

11. That after receiving said report, the Legislature of the State of New York adopted what later became Chapter 713 of the laws of 1929, known as the Multiple Dwelling Law. That said Multiple Dwelling Law was based on a legislative finding, as is stated in Section 2 thereof.

12. That prior to the Multiple Dwelling Law, lodging houses in the City of New York were regulated by the Charter of the City of New York and ordinances adopted pursuant thereto and were not subject to any State Dwelling or Housing law. That lodging houses were brought within the purview of the Multiple Dwelling Law by the enactment thereof.

13. That all lodging houses built within the City of New York subsequent to the enactment of the Multiple Dwelling Law, were built in accordance with said Multiple Dwelling Law as well as all other laws, rules and regulations applicable thereto; that all such lodging houses are proper and safe in every respect and are so constructed as not to constitute a fire hazard or a public nuisance.

14. That this action is brought on behalf of all lodging house owners and operators described in paragraph 13 hereof and that the facts set forth herein apply with equal force to all such other persons and properties.

[fol. 14] 15. That since 1929, there has been no legislative investigation of conditions with reference to lodging houses and other multiple dwellings in the City of New York; nor has any resolution or law been enacted by the Legislature, finding that lodging houses built since the enactment of the Multiple Dwelling Law constituted a danger to the health, safety, morals, welfare or reasonable comfort of the citizens of this State.

16. That since 1929 and the erection of this lodging house, no general advancements have been made in the methods of

building construction or safety measures affecting lodging houses in the City of New York.

17. That at no time has any fire occurred in any lodging house built since the year 1929 in which there has been any loss of life, and that the safeguards imposed by the Multiple Dwelling Law as it existed on April 4, 1944, and other laws and regulations applicable thereto, are in all respects adequate and sufficient to prevent loss of life.

18. At its 1944 session, the Legislature of the State of New York passed what later became Chapter 553 of the Laws of 1944.

19. By reason of the enactment of said Chapter, defendant caused to be placed against said premises known as the Clover Hotel, and more fully described herein, an alleged violation, copy whereof is hereto annexed, marked "Exhibit I" and incorporated by reference.

20. That said "Exhibit I" is improper and indefinite insofar as the same does not point out the conditions which are claimed to constitute a violation in said building.

[fol. 15] 21. That under any circumstances subdivisions "a", "b", "c", "e", "f", "g", "i", "k", "m", "n", "q", "s", "t", of the instruction sheet annexed to "Exhibit I" have no application to the building in question, since the conditions described in said subdivisions either have been complied with under existing law or do not exist at plaintiff's said building.

22. That the building known as the Clover Hotel has a market value of approximately $25,000.00; that the cost of complying with any applicable parts of said violation is the sum of approximately $7,500.00; and that the benefit to be obtained by complying with any applicable parts of said violation is negligible.

23. That plaintiff has no adequate remedy of law.

24. That said law is unconstitutional and void for the following reasons:

(a) Said law deprives plaintiff and all persons similarly situated of an equal protection of the laws, since under said Chapter 553 of the laws of 1928 and under the Multiple Dwelling Law as the same now exists, any person may

lawfully erect a building in the same locality as plaintiff's and in all respect similar to plaintiff's building, and operate the same, without any legal necessity for complying with Chapter 553 of the laws of 1944.

(b) Said law is unreasonable and confiscatory by reason of the fact that compliance with the same would require a large expenditure of money with very little benefit and without any necessity therefor and without any finding by [fol. 16] any competent legislative body that any condition exists requiring the exercise of the police power of the State of New York.

(c) Said law is discriminatory and void by reason of the fact that it makes no distinction between buildings in existence prior to the enactment of the Multiple Dwelling Law, and buildings built subsequent to the enactment of the Multiple Dwelling Law and in full compliance therewith.

25. That by reason of the facts herein stated, the actions taken and threatened by defendant are calculated to and will cause plaintiff irreparable damage unless defendant is restrained.

For a Second Cause of Action

26. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" to "23" hereof, with the same force and effect as if said paragraphs were herein set forth at length.

27. That the provisions of Section 13 of the Multiple Dwelling Law as amended by Chapter 553 of the laws of 1944 were not intended to and do not apply to plaintiff's building, but are intended to apply and apply only to buildings existing prior to the enactment of the Multiple Dwelling Law.

28. That by reason of said facts, defendant's action in placing said alleged violation as stated in "Exhibit 1" annexed to the complaint against plaintiff's premises is illegal and void.

Wherefore, plaintiff demands judgment as follows:

[fol. 17] 1. Declaring null, void and of no effect, the provisions of Chapter 553 of the laws of 1944 insofar as the same purport to plaintiff's building and buildings similarly situated.

2. Enjoining and restraining the defendant during the pendency of this action and permanently from taking any steps or proceedings to enforce or threatening to enforce the provisions of Chapter 553 of the laws of 1944 insofar as the same attempt to affect plaintiff's building or buildings similary situated.

3. Directing defendant to remove of record against plaintiff's premises, the violation described in "Exhibit I" annexed hereto.

4. Directing defendant to remove of record any similar violations against premises similarly situated.

5. Granting plaintiff such other, further and different relief as may be just, together with the costs of this action.

George G. Lake, Attorney for Plaintiff, Office & P. O. Address, 38 Park Row, Borough of Manhattan, City of New York.

(Verified by James Berintendi, President of plaintiff, on July 10, 1944.)

[fol. 18] EXHIBIT I TO COMPLAINT

DEPARTMENT OF HOUSING AND BUILDINGS, CITY OF NEW YORK

Notice of Violation of the Multiple Dwelling Law

Premises: 312/14 Bowery

Date: April 21, 1944,
Borough: Man.

Violations

No. 4 In violation of Section 13 of the Multiple Dwelling Law as amended by Chapter 553 of the Laws of 1944, the 1st, 2nd, 3rd and 4th stories are being occupied for lodging house purposes as defined in Subdivision 7 of Section 4 of such law. You are hereby ordered to discontinue the unlawful use and occupancy of the stories specified above or to file an alteration application and plans and make all parts of

the building conform to all the requirements of the Multiple Dwelling law.

Note: Attached hereto is a sheet, dated April 17, 1944, containing instructions for the filing of an alteration application and plans; also, a resume of some of the important provisions of Section 13 as amended by Chapter 553 of the Laws of 1944, effective April 5, 1944.

KEEP THIS NOTICE—THE FEE FOR A DUPLICATE IS $1.00

(Page #2)

[fol. 19] DEPARTMENT OF HOUSING AND BUILDINGS OF THE CITY OF NEW YORK

April 17, 1944.

Instructions

For the Filing of Alteration Applications and Plans for Existing Non-Fireproof Lodging Houses

Under the provisions of Chapter 553 of the Laws of 1944, effective April 5, 1944, all existing lodging houses are required to comply with the provisions of Section 13 of the Multiple Dwelling Law as amended. A resume of some of the important provisions of this section as amended follows:

General

3. (a) All wood or other combustible facing shall be removed from the walls, partitions and ceilings of the entrance halls, public halls and public stairs.

(b) All wood soffits, fascias, railings, balustrades and newel posts shall be removed and be replaced with metal or other hard incombustible material. Arrangement of same must be shown on the plans.

(c) Interior partition sash windows in the public halls, which do not open to the outer air and which are not used in the operation of the lodging house, shall be removed and the openings closed up and fire retarded.

[fol. 20] (d) The entire building shall be provided with an automatic wet pipe sprinkler system. In connection with such system there shall be an automatic

closed circuit fire alarm system so arranged and installed as to give warning at a recognized central station approved by the Fire Department. Such sprinkler and alarm systems shall have supervisory and maintenance service.

(e) If all entrance halls, public halls and stair halls are not fire retarded in accordance with the rules and regulations of the Department, such portions of the building shall be fire retarded. Method of fire retarding must be shown on the plans.

(f) All doors opening upon entrance halls public halls, stair halls or public stairs shall be self-closing fireproof doors, and such doors shall not be held open by any device whatever.

(g) The cellar ceiling and the ceiling of each story above such cellar shall be fire retarded.

(h) Except partitions forming the enclosures of existing cubicles, all wood partitions and all combustible covering on walls or partitions throughout the portion of the building used for lodging house purposes shall be removed or protected with incombustible material approved by the Department.

(i) Main aisles providing access to required means of egress shall be not less than 3 feet in width, and [fol. 21] all aisles, cubicles, and beds in open dormitories shall be shown on the plans.

(j) "EXIT" signs, with letters 8 inches in height and with red lights (in keyless sockets) not less than 25 watts, and illuminated directional signs are required, and the location of same shall be shown on the plans. At least one such sign shall be easily visible from the doorway of each cubicle.

(k) Access from the public hall at the top story to the roof shall be by means of scuttle or bulkhead. The size and arrangement shall be shown on the plans.

(m) Two remote means of egress shall be provided from each story. One of such means of egress shall be to an enclosed stair. Arrangement and location of both means of egress must be shown on the plans.

(n) All openings on the course of a fire-escape shall be provided with automatic, self-closing, fireproof, wire glass window assemblies or self-closing, fire-proof door assemblies acceptable to the Department.

(o). A completely enclosed room or compartment shall be provided for the storage of mattresses, linens, brooms, mops, and other paraphernalia. Enclosing partitions shall be fire-resistive and shall be shown on the plans. Compartments in which mattresses are stores shall be provided with a window 10 square feet in area and shall open on a street or yard.

[fol. 22] (p) There shall be provided on each floor one or more containers of metal or other hard incombustible material, with self closing lid, in which all scrap and refuse of a combustible nature shall be placed until finally disposed of.

(q) Ceilings and floors adjoining any furnace, stove, boiler, or hot-water heater shall be fire retarded. Metal breechings and flues connected to such devices shall be properly secured.

(r) No insecticide containing inflammable or combustible materials shall be stored without a permit from the Fire Department, and no such inflammable or combustible insecticide shall be stored except in a completely enclosed room or compartment of fire-resistive construction. The location of such room or compartment shall be shown on the plans. Such rooms or compartments shall be ventilated.

(s) The top of the enclosure of every cubicle shall be at least 2 feet from the ceiling.

(t) Existing cubicles complying with the provisions of this section may be maintained. The location and arrangement of all cubicles must be shown on the plans.

(u) All parts of every lodging house shall be inspected by a clerk or watchman at least once in every two hours.

[fol. 23] Stairs and Fire-Escapes

The number of persons accommodated on any story in a lodging house shall not be greater than the sum of the following components:

Twenty-two persons for each full multiple of 22 inches in the smallest clear width of each means of egress approved by the Department, other than a fire-escape.

Twenty persons for each regulation fire-escape accessible from such story if it is above the entrance story.

The arrangement and clear width of the stairs from the entrance to the top story and the location and terminus of each fire-escape shall be shown on the plans.

Note: Under the provisions of Subdivision 6 of Section 13 as amended by Chapter 553 of the Laws of 1944, the Department is required to inspect all lodging houses at intervals of not more than three months. In the process of making these mandatory inspections the sanitary conditions of the premises will be observed for possible violations of rules and regulations adopted by the Department pursuant to the provisions of Sections 160 and 885 of the New York City Charter governing the conduct and maintenance of lodging houses in the City of New York.

[fol. 24] In Supreme Court of New York

Answer

The defendant appearing by Ignatius M. Wilkinson, Corporation Counsel, answering the complaint of the above-named plaintiff, alleges as follows:

First. Denies each and every allegation contained in paragraphs of the plaintiff's complaint marked "6," "20," "21," "23," "24," and subdivisions, "25," "27," and "28."

Second. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs of plaintiff's complaint marked "1," "3," "4," "7," "8," "9," "14," "15," "16," and "22."

Third. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "5" of plaintiff's complaint, except that he admits that certificate of occupancy numbered 27234 was issued and denies that the building complies with the Multiple Dwelling Law.

Fourth. Denies each and every allegation contained in paragraph "13" of plaintiff's complaint, which alleges "that all such lodging houses are proper and safe in every respect and are so constructed as not to constitute a fire hazard or a public nuisance."

Fifth. Admits so much of paragraph numbered "26" of the complaint as has not already been expressly denied [fol. 25] or with respect to the matters of which he has not already denied any knowledge or information sufficient to form a belief.

Sixth. Denies each and every allegation contained in paragraph of the complaint marked "17" except denies any knowledge or information sufficient to form a belief as to whether any fire occurred in any lodging house built since 1929 in which there was any loss of life.

As and for a First, Separate, and Affirmative Defense, Defendant Further Alleges

Seventh. That the Temporary Commission was appointed in May, 1927, to examine and revise the Tenement House Law. This commission was created under authority of Chapter 569 of the Laws of 1927 and Chapter 519 of the Laws of 1928 and on February 4, 1929, reported its findings to the Legislature of the State of New York. Annexed hereto and made a part of this answer, marked Exhibit "A," is a copy of such report.

Eighth. That legislative findings were incorporated in the Multiple Dwelling Law, reading as follows:

> "Section 2. Legislative Finding. It is hereby declared that intensive occupation of multiple dwelling sites, overcrowding of *of* multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against and defective provisions for escape from fire, and improper sanitation of multiple dwellings in certain areas of the state are a menace to the

health, safety, morals, welfare, and reasonable comfort of the citizens of the state; and that the establish- [fol. 26] ment and maintenance of proper housing standards requiring sufficient light, air, sanitation and protection from the fire hazards are essential to the public welfare. Therefore, the provisions hereinafter prescribed are enacted and their necessity in the public interest is hereby declared as a matter of legislative determination."

Ninth. That from time to time the Multiple Dwelling Law, which is aimed at making multiple dwellings safer places in which to live and to provide for proper protection from fire hazards, was amended.

Tenth. That the premises known as 312-314 Bowery, in the Borough of Manhattan, City of New York, consist of a non-fireproof lodging house, which is a Class B multiple dwelling, is four stories and cellar in height, a brick building on a plot of ground fifty feet frontage and a depth of one hundred feet.

Eleventh. That although plaintiff received a copy of violations for the Department of Housing and Buildings with respect to its premises, it has refused and failed and still refuses and fails to comply with the order of the Commissioner of Housing and Buildings, a copy of which is attached herewith marked Exhibit "B."

Twelfth. That plaintiff admits the failure to make the necessary repairs and alterations at its premises pursuant to the provisions of the Multiple Dwelling Law and the order of the Commissioner of Housing and Buildings served upon it pursuant thereto.

Thirteenth. That plaintiff's premises are unsafe, improperly protected from fires and in general maintained [fol. 27] contrary to the provisions of the Multiple Dwelling Law as amended by Chapter 553 of the Laws of 1944.

As and for a Second, Separate and Affirmative Defense, Defendant further Alleges

Fourteenth. That plaintiff has an adequate remedy at law.

As and for a Third, Separate and Affirmative Defense, Defendant Further Alleges

Fifteenth. Repeats and realleges each and every allegation contained in the paragraphs of this answer numbered "Seventh," "Eighth," and "Ninth" with the same force and effect as if said allegations were herein specifically set forth at length.

Sixteenth. That the amendment of April 5, 1944, to Section 13 of the Multiple Dwelling Law, known as Chapter 553 of the Laws of 1944, entitled "An Act to amend the multiple dwelling law, in relation to fire protection in existing lodging houses," has a direct relationship to the public health, safety and welfare.

Wherefore, defendant demands judgment dismissing the complaint herein, with costs.

Ignatius M. Wilkinson, Corporation Counsel, Attorney for Defendant, Office & Post Office Address, Municipal Building, Borough of Manhattan, City of New York.

(Verified by William Wilson, on October 13, 1944.)

[fol. 28] EXHIBIT "A" TO ANSWER

Report of Temporary Commission to Examine and Revise the Tenement House Law

This Commission was appointed in May, 1927, under the authority of chapter 569 of the Laws of 1927. It organized promptly, worked intensively and reported to the Legislature January 31, 1928, at that time submitting its recommended revision of the Tenement House Law in the form of the "Dwellings Bill." This measure failed of passage. The Commission was continued, its personnel increased and its powers broadened pursuant to chapter 519 of the Laws of 1928. The new members appointed under that mandate were H. H. Murdock (New York), Hubert F. Breitwieser (Kings) and Leonard C. L. Smith (Queens). In replacement of Senator Charles J. Hewitt and former Assemblyman Emory W. Dyckman, Senator George L. Thompson (Suffolk) and Assemblyman Robert K. Story, Jr. (Kings) were respectively designated.

The Commission, so enlarged to 14 members, held its first meeting June 7, 1928, retained its then officers and counsel and established its program.

Between that date and the submission of this report the Commission or its committees held 57 meetings, heard 116 witnesses or consultants, and took 1,216 pages of testimony. One of these meetings were held in Buffalo and was attended by representatives of trade and civic bodies of that city. [fol. 29] Three meetings were held at the Bar Association of the City of New York and were attended by designated committees of architectural and engineering, chamber of commerce, real estate, and other civic and trade bodies. Three meetings were formal public hearings at City Hall in the City of New York. (These occurred in December, 1928, after a tentative draft of the Multiple Dwelling Bill had been before the public several weeks.) Four were in the nature of conferences with representatives of the city administration. The balance of the meetings were executive. The Commission has received a substantial number of briefs from trade, technical, civic, and welfare bodies and written suggestions from individuals and from anonymous sources.

The bill presented simultaneously with this report reflects the conclusions of this Commission in detail. A digest of the measure is appended hereto.

The general effect of the measure will be to improve light and air conditions in future homes in multiple dwellings, reduce the construction cost of rentable space, promote elasticity of design with incidental plan economy, and bring all kinds of multiple dwellings in residential areas under uniform height and bulk limitations.

Existing tenement houses built since 1901 and transient hotels are structurally unaffected by the proposed law.

As to so-called "old-law" tenement houses (built before 1901) the Commission's recommendations will measurably improve fire-safety and sanitation. In both respects, however, much, but by no means all, of the construction which antedated the present Tenement House Law will still be [fol. 30] substantially below modern standards. This result cannot be avoided without forcing the abandonment of many of the "old-law" tenement houses. This course was vigorously urged by several groups which requested the Commission to now fix a date in the future when the occupancy of the less habitable of such dwellings would be

unlawful. The inclusion of such a provision in the Multiple Dwellings Law is not considered practicable at this time. It is commonly stated that "old-law" tenement houses shelter about a third of the city's population. Certainly they shelter a substantial portion with the lowest earnings. The abandonment of the worst of such structures is extremely desirable, but that abandonment cannot be considered apart from the problem of providing other housing for their occupants. That problem is beyond the scope of this commission and the scope of a measure designed solely to set up housing standards. It should be noted in this connection that in 1927 the percentage of vacancies in old-law apartments overtook the percentage prevailing just before the housing shortage created by the war. This was about 7 per cent. Since 1927 the vacancy percentage has risen to about 10 per cent. South of Fourteenth Street, that part of the lower east side where it is generally supposed the least desirable "old-law" tenement houses are to be found, the percentage of vacancies in December, 1928, was nearly 14 per cent. These figures indicate that the tenants of such dwellings are bettering themselves as rapidly as their means and available housing facilities permit. It is believed that the proposed Multiple Dwellings Law will facilitate the building of multiple dwellings thereby [fol. 31] bringing proper accommodations within the reach of wage-earners; and in that respect aid in meeting the condition created by ancient, obsolete and undesirable housing now occupied by those within whose means no other or better facilities are available.

The Multiple Dwellings Law will make "old-law" tenement houses safer and more sanitary places in which to live, and will hold the owners to higher standards of cleanliness than under the present law.

The Commission has dealt with and endeavored to dispose of the apartment hotel problem. It recognizes that such structures have come in response to a demand for living conditions of the kind which the apartment hotel supplies. That demand may for the future be lawfully and safely met without jeopardy to the light and air of neighboring property. Existing buildings of that type have been centers of litigation for many months. Without being relieved of any violations of law or penalties accruing therefrom up to the effective date of the proposed Multiple Dwellings Law, the owners of apartment hotels

with cooking facilities would on and after that date be free of further violations upon compliance with requirements covering the safety of the cooking compartment which is the touchstone of their success and, at the same time, the source of their troubles.

The vexing problem of the converted dwelling—the one-time private home now serving as a multiple dwelling, often without reflecting structurally the fire protection and sanitation required by its increased occupancy—has, it is hoped, been settled under the formulae of the proposed law. These buildings provide inexpensive housing. They [fol. 32] range from the small boarding and rooming house to the fully equipped apartment house. Those in which cooking is known to occur have in some hundreds of instances complied with the Tenement House Law. Many thousands have not. Where cooking does not occur that law is not applicable. The local building code is. The extent to which this code has not been complied with is unknown. The problem has been to frame requirements which furnish better fire-protection and sanitation than the building code, less exacting than the Tenement House Law which is generally ignored, and at the same time keep the demands such that people of limited means can meet them. The Multiple Dwellings Law sets up readily attainable standards and should result in bringing into a status of legality (and comparative safety and cleanliness) large numbers of buildings now unlawfully occupied and, but for the proposed measure, without prospect of ever securing a bill of health from the enforcing department.

The Multiple Dwellings Law covers all types of multiple dwellings in the City of New York and such other communities as may wish to come under its operation. It does not interfere with the more restrictive provisions of any local zoning ordinance. It does not interfere with local administrative departments. Existing jurisdictional lines are undisturbed and may be freely changed by the municipality. In connection with departmental authority, however, the Commission has been forced to observe the virtual breakdown in the enforcement by city magistrates of the Tenement House Law. The practice of frequently adjourning cases involving violations, freely discharging or [fol. 33] suspending sentence, and of imposing negligible fines in the trifling number of cases in which any penalty whatever is imposed was noted in the earlier report of this

Commission and continued down to the December hearings where vigorous public protest was made. In an effort to relieve the magistrates' courts as far as possible of a responsibility with which they have been unsympathetic the Commission in the proposed law gives the enforcing department (primarily the tenement house department in the City of New York), power, when an owner refuses for twenty-one days to remedy a condition endangering human life or health, to make the required repairs at the expense of the owner of his property. Similar authority has for some years been vested in the health department and the superintendent of buildings. Neither has had occasion to exercise the authority for some time. Yet the violations of the Sanitary Code and of the Building Code are comparatively few and are adequately punished. It is anticipated that the existence of similar authority in the tenement house department will prompt landlords to correct violations more speedily and that with the decrease in number of court cases the magistrates will be disposed to hold offenders to stricter accountability. The twenty-one day period, however, merely marks the time within which repairs may not be made by the department. It does not affect the owner's criminal or civil liability for failure to immediately correct violations. This remains as in the present law.

The raising of the measure of population in the application section of the bill from 500,000 to 800,000 leaves Buffalo unaffected by the measure. The Consensus of opinion [fol. 34] in Buffalo was that under existing conditions the present Tenement House Law in its application to Buffalo required no change. The prevailing type of multiple dwelling in Buffalo rarely exceeds four stories and the standards of construction and plan, while better than required by the Tenement House Law, are not inconsistent with its provisions.

January 24, 1929.

James L. Whitley, Chairman; Samuel H. Hofstadter, Vice-Chairman; Lawson Purdy, Secretary; Benjamin Antin, Raymond B. Ingersoll, Leonard C. L. Smith, Edwin W. Wallace, Seabury C. Mastick, Hubert F. Breitwieser, H. H. Murdock, Darwin R. James, Robert K. Story, Jr., George L. Thompson.

EXHIBIT "B" TO ANSWER

Same as Exhibit I annexed to the complaint and printed at folios 18-23, herein.

[fols. 35-36] IN SUPREME COURT OF NEW YORK, SPECIAL TERM—PART III, NEW YORK COUNTY

OPINION OF THE COURT—October 27, 1944

Queenside Hills Realty Co., Inc., v. *Wilson*—Motion by defendant for judgment dismissing the complaint is granted. Order signed.

[fol. 37] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

File No. 17442—1944

QUEENSIDE HILLS REALTY CO. INC., Plaintiff-Appellant,

against

WILLIAM WILSON, as Commissioner of Housing and Buildings of the City of New York, Defendant-Respondent

NOTICE OF APPEAL TO THE COURT OF APPEALS

SIRS:

Please take notice that Queenside Hills Realty Co. Inc., the plaintiff, hereby appeals to the Court of Appeals from the judgment entered upon the decision of the Appellate Division of the Supreme Court for the First Department in the Office of the Clerk of the County of New York on the 9th day of April, 1945, affirming the judgment of the Special Term of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on December 19, 1944 dismissing the complaint herein, and that the plaintiff appeals from each and every part of said judgment, and from the whole thereof. This appeal is taken as of right upon the ground that there is directly involved [fols. 38-39] the construction of the constitution of the State of New York and the constitution of the United States.

Dated, New York, April 23, 1945.

Yours, etc., George G. Lake, Attorney for Plaintiff-Appellant, Office & P. O. Address, 60 East 42nd Street, Borough of Manhattan, New York City.

To Honorable Ignatius M. Wilkinson, Corporation Counsel, Attorney for Defendant-Respondent, Municipal Building, Borough of Manhattan, New York City. Honorable Archibald R. Watson, County Clerk of New York County.

[fol. 40] In Supreme Court of New York, County of New York

Queensside Hills Realty Co. Inc., Plaintiff-Appellant,

against

William Wilson, as Commissioner of Housing and Buildings of the City of New York, Defendant-Respondent

Judgment of Affirmance

The plaintiff-appellant having appealed to the Appellate Division of the Supreme Court, First Department, from the order entered herein in the office of the Clerk of the County of New York on or about the 27th day of October 1944 and from the order entered in the office of the said Clerk on or about the 12th day of December 1944 resettling the aforesaid order entered on the 27th day of October 1944 granting [fol. 41] defendant-respondent's motion to dismiss the complaint and from the judgment entered thereon in the office of the said Clerk on or about the 19th day of December 1944, and the appeal having been duly argued at the said Appellate Division, and that Court in an order dated the 29th day of March 1945 having unanimously ordered and adjudged that the order and judgment so appealed from be in all things affirmed, and that the defendant-respondent recover of the plaintiff-appellant the costs of the appeal, and a certified copy of the said Appellate Division order having been duly filed in the office of the Clerk of the County of New York, and the costs of the defendant-respondent having been duly taxed at the sum of $91.90,

Now on motion of Ignatius M. Wilkinson, Corporation Counsel, attorney for defendant-respondent, it is

Adjudged that the orders and judgment so appealed from be and the same hereby are unanimously affirmed, and it is further

Adjudged that the defendant-respondent William Wilson, as Commissioner of Housing and Buildings of the City of

New York (Municipal Building, Manhattan, N. Y. C.) recover of the plaintiff-appellant Queenside Hills Realty Co. Inc. (312-14 Bowery, Manhattan, N. Y. C.) the sum of $91.90 costs as taxed, and that the defendant-respondent have execution therefor.

Dated, April 9, 1945.

Archibald R. Watson, Clerk.

[fols. 42-43] AFFIDAVIT OF NO OPINION

STATE OF NEW YORK,
County of New York, ss:

George G. Lake, being duly sworn, deposes and says:

I am the attorney for the plaintiff-appellant herein and am fully familiar with all the facts of the appeals herein. No opinion was rendered by the Appellate Division in the First Department in affirming Special Term herein.

George G. Lake.

Sworn to before me this 25th day of April, 1945. Bella Klein, Notary Public, Kings County. Certificate filed N. Y. County. Comm. Expires March 30, 1946.

[fol. 44] IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 19th day of July in the year of our Lord one thousand nine hundred and forty-five, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Senior Associate Judge, Presiding; John Ludden, Clerk.

QUEENSIDE HILLS REALTY CO., INC., Appellant,
ag'st
WILLIAM WILSON, as Commissioner of Housing and Buildings of the City of New York, Respondent

REMITTITUR—July 19, 1945

Be is Remembered. That on the 29th day of May in the year of our Lord one thousand nine hundred and forty-

five, Queenside Hills Realty Co. Inc., the Appellant—in this cause, came here unto the Court of Appeals, by George G. Lake its attorney—and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department,

And William Wilson, as Commissioner of Housing and Buildings of the City of New York, the respondent in the said cause, afterwards appeared in the said Court of Appeals by Ignatius M. Wilkinson his attorney,

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed,

Whereupon, The said Court of Appeals having heard this Cause argued by Mr. George G. Lake of Counsel for the [fol. 45] Appellant, and by Mr. Francis A. Fallan Jr. of Counsel for the respondent—and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with Costs.

And it was also further ordered that the records aforesaid and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to Law.

And afterwards, to wit, on the 25th day of October, 1945 an order was duly made amending the remittitur herein, a certified copy of which order is hereto attached and made a part hereof.

Therefore, it is considered that the said judgment be affirmed, with costs as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justice thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justice thereof, etc.

John Ludden, Clerk of the Court of Appeals of the State of New York.

[fol. 46] Court of Appeals,
Clerk's Office, Albany

July 19, 1945.

I hereby certify, that the proceeding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk.

[fol. 47] In the Court of Appeals of New York

Present Hon. John T. Loughran, Chief Judge, Presiding.

Queenside Hills Realty Co., Inc., Appellant,

vs.

William Wilson, as Commissioner, etc., Respondent

Order Amending Remittitur—October 25, 1945

A motion for the reargument and to amend the remittitur in the above cause having heretofore been made herein upon the part of the Appellant, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the motion for reargument be and the same hereby is denied with ten dollars costs and necessary printing disbursements and the remittitur amended by adding thereto the following:

A question under the Constitution of the United States was presented and necessarily passed upon. The Appellant contended that Chapter 553, Section 4, of the laws of the State of New York of 1944 as applied to Appellant, is violative of, and repugnant to, Section 1 of the Fourteenth Amendment of the Constitution of the United States. This Court held that Chapter 553, Section 4 of the laws of the State of New York, 1944, as applied to Appellant, is not violative of, or repugnant to, Section 1 of the Fourteenth Amendment of the Constitution of the United States.

And the Supreme Court, County of New York is hereby requested to direct the Clerk to return said remittitur to this Court for amendment accordingly.

A copy.

Raymond J. Cannon, Deputy Clerk.

[fol. 48] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

ORDER ALLOWING APPEAL

Upon reading the petition of Queenside Hills Realty Co. Inc., a New York corporation, the plaintiff-appellant herein praying for the issuance of an order herein allowing its appeal to the Supreme Court of the United States from a final judgment upon reargument of the Court of Appeals of the State of New York, and it appearing that in said final judgment of this court, a question under the Constitution of the United States was presented and necessarily passed upon; that the appellant contended that Chapter 553, Section 4, of the laws of the State of New York of 1944, as applied to appellant, is violative of, and repugnant to, Section 1 of the Fourteenth Amendment of the Constitution of the United States, and that this Court held that Chapter 553, Section 4, of the laws of the Court held that Chapter 553, Section 4, of the laws of the State of New York of 1944, as applied to appellant, was not violative of, or repugnant to, Section 1 of the Fourteenth Amendment of the Constitution of the United States, and it further appearing from said petition that such petition is a proper petition for the issuance of this order,

Now, Therefore, it is ordered by the undersigned, the Chief Judge of the Court of Appeals of the State of New [fol. 49] *New* York, that said appeal to the Supreme Court, of the United States from said final judgment of this court lie, and the same is hereby allowed, and it is further

Ordered, that the plaintiff-appellant, Queenside Hills Realty Co. Inc., execute to William Wilson as Commissioner of Housing and Buildings of the City of New York, defendant-respondent-appellee, its bond with surety to be approved by the undersigned in the sum of $250.00 conditioned according to law, and it is further

Ordered, that the Clerk of the Supreme Court of the State of New York, County of New York, who is possessed of the record herein, and with whom such record is filed in accordance with the laws of the State of New York within forty days after this date, make and transmit to the Clerk of the United States Supreme Court, a transcript of the record herein containing a true copy of all material parts

of the record herein, which shall be designated by praecipe filed with him by either of the parties hereto, or stipulated by said parties according to law, and it is further

Ordered, that this order and all further proceedings herein be filed in the Office of the Supreme Court of the State of New York, County of New York.

John T. Loughran, Chief Judge of the Court of Appeals.

[fol. 50] In Court of Appeals of New York

[Title omitted]

Petition for Allowance of Appeal to the United States Supreme Court

To the Chief Judge of the Court of Appeals of the State of New York:

Queenside Hills Realty Co. Inc., the plaintiff-appellant in this action, a corporation of the State of New York, respectfully shows:

1. Petitioner is the appellant in this action.

2. The appeal in this case was from a judgment of the Appellate Division of the Supreme Court of the State of New York for the First Judicial Department, affirming a judgment of the Special Term of the Supreme Court, New York County, dismissing the complaint herein on motion in an action for an injunction and a declaratory judgment, declaring unconstitutional and void so much of the provisions of Chapter 553 of the Laws of 1944 as affected a building owned by plaintiff, located at 312 and 314 Bowery, Borough of Manhattan, City and State of New York. Said building was and still is conducted as a lodging house, and was erected in 1940.

3. On July 19, 1945, this court unanimously affirmed said Appellate Division without opinion. A judgment to that effect was entered in the office of the Clerk of the County of New York, who is likewise the Clerk of the Supreme Court of the State of New York, County of New York on July 27, 1945. Thereafter, and on October 15, 1945, plaintiff-appellant moved this court for reargument of said appeal

and judgment, and likewise to amend the remittitur by [fol. 51] certifying that a question under the Constitution of the United States was presented and necessarily passed upon. By its judgment dated October 25, 1945, this court denied the motion for a reargument, but amended the remittitur by adding the following:

> "A question under the Constitution of the United States was presented and necessarily passed upon. The appellant contended that Chapter 553, Section 4, of the laws of the State of New York of 1944, as applied to appellant, is violative of, and repugnant to, Section 1 of the Fourteenth Amendment of the Constitution of the United States. This Court held that Chapter 553, Section 4, of the laws of the State of New York of 1944, as applied to appellant, is not violative of, or repugnant to, Section 1 of the Fourteenth Amendment of the Constitution of the United States."

Said judgment further provided that the Supreme Court, County of New York, was requested to direct its Clerk to return said remittitur for amendment accordingly. On November 2, 1945, an order was entered in the Supreme Court, New York County, making said order of the Court of Appeals the order of the Supreme Court, New York County. Said remittitur has since been remitted to the Clerk of this Court and amended accordingly.

4. That the record of all proceedings in this court and in the courts below is, in accordance with the practice in this State, filed in the office of the Clerk of the Supreme Court of the State of New York, County of New York, and that said Clerk is the Clerk of the Court possessed of the record as prescribed by the Rules of the United States Supreme Court.

5. That there is error in the final judgment of this court, denying the reargument herein, whereby petitioner is aggrieved and that as appears by paragraph 3, a question under the Constitution of the United States was presented and necessarily passed upon. That in accordance with the provisions of Subdivision (a) of Section 344 of Title 28 of the United States Code (which is Section 237 of the Judicial Code), petitioner desires to appeal to the Supreme Court of the United States from said final judgment upon reargu-

[fol. 52] ment herein, and petitioner consequently prays for the allowance of such appeal. Petitioner has annexed hereto and hereby respectfully incorporates its assignment of errors, and respectfully prays that for such errors the said judgment of the Court of Appeals of the State of New York, dated October 25, 1945, be reversed and a judgment ordered in favor of petitioner, the plaintiff-appellant herein, and for costs.

No previous application for this relief has been made to any court or judge.

Queenside Hills Realty Co., Inc., Petitioner, by George G. Lake, Attorney.

George G. Lake, Attorney for Plaintiff-Appellant, Office & P. O. Address, 60 East 42nd Street, Borough of Manhattan, New York 17, N. Y.

Duly sworn to by George G. Lake. Jurat omitted in printing.

[fol. 53] In Court of Appeals of New York

[Title omitted]

Assignment of Errors

Comes now Queenside Hills Realty Co. Inc., plaintiff appellant above named, and as appellant to the Supreme Court of the United States from the final judgment and decision herein as per remittitur of this court, dated October 25, 1945, assigns as error:

1. That the Court of Appeals of the State of New York erred in refusing to grant a reargument of its final judgment herein and erred in refusing upon such reargument to reverse the judgment of the Appellate Division of the Supreme Court for the First Judicial Department for the State of New York, affirming a judgment of the Supreme Court of the State of New York, County of New York, dismissing the complaint herein upon motion of defendant-respondent-appellee.

2. That the Court of Appeals of the State of New York erred in holding that Section 4 of Chapter 553 of the Laws of New York of 1944 does not violate Section 1 of the Fourteenth Amendment of the Constitution of the United States.

3. That the Court of Appeals of the State of New York erred in holding that Section 4 of Chapter 553 of the Laws of New York of 1944 does not violate Section 1 of the Fourteenth Amendment of the Constitution of the United States by reason of the fact that said law is discriminatory as [fol. 54] applied to the building owned and operated by plaintiff-appellant.

4. That the Court of Appeals of the State of New York erred in holding that Section 4 of Chapter 553 of the Laws of New York of 1944 does not violate Section 1 of the Fourteenth Amendment of the Constitution of the United States by reason of the fact that said provision of law requires an expenditure which is unreasonable and confiscatory as applied to the building owned and operated by plaintiff-appellant.

5. That the Court of Appeals of the State of New York erred in holding that Section 4 of Chapter 553 of the Laws of New York of 1944 does not violate Section 1 of the Fourteenth Amendment of the Constitution of the United States by reason of the fact that the effect of said statute is to make the date of April 5, 1944 the determining factor of whether or not said statute applies to the building of plaintiff and those similarly situated, and that said date bears no reasonable connection to the matters to which said legislation was directed.

6. That the Court of Appeals of the State of New York erred in holding that Section 4 of Chapter 553 of the Laws of New York of 1944 does not violate Section 1 of the Fourteenth Amendment of the Constitution of the United States by reason of the fact that said provision of law is without the police power of the State of New York.

7. That the Court of Appeals of the State of New York erred in holding that Section 4 of Chapter 553 of the Laws of New York of 1944 does not violate Section 1 of the Fourteenth Amendment of the Constitution of the United States by reason of the fact that said provision of Law establishes an improper and unjustifiable classification.

8. That the Court of Appeals of the State of New York erred in holding that the complaint of plaintiff appellant in this cause was legally insufficient.

[fol. 55] 9. That the Court of Appeals of the State of New York erred in holding that defendant was entitled to a judgment dismissing the complaint on motion.

10. That the Court of Appeals of the State of New York erred in holding that plaintiff was not entitled to a trial and to the introduction of proof.

For which errors Queenside Hills Realty Co. Inc., a New York Corporation, the plaintiff-appellant above named, prays that the said final judgment on reargument of the Court of Appeals of the State of New York as per its remittitur dated October 25, 1945, in the above entitled cause, be reversed, and that a judgment ordered in favor of the said plaintiff-appellant and for costs.

George G. Lake, Attorney for Plaintiff-Appellant. Office & P. O. Address, 60 East 42nd Street, Borough of Manhattan, New York City.

[fols. 56-67] Citation in usual form showing service on Ignatius M. Wilkinson omitted in printing.

[fol. 66] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 67-69] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON—Filed January 29, 1946

SIRS:

Please take notice that the points upon which appellant intends to rely, are those set forth in the assignment of errors.

Dated: New York, January 28, 1946.

Yours, etc., George G. Lake, Attorney for Appellant Office & P. O. Address, 60 East 42nd Street, Borough of Manhattan, New York City.

To: Hon. John J. Bennett, Jr., Corporation Counsel of the City of New York, Attorney for Appellee, Municipal Building, New York, N. Y. Hon. Charles Elmore Cropley, Clerk of the Supreme Court of the United States, Washington 13, D. C.

[fol. 70] SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed January 29, 1946

SIRS:

Please take notice that pursuant to Subdivision 9 of Rule XIII of the Rules of this Court, the appellant hereby designates the following parts of the record to be printed:

1. The papers on appeal in the Court of Appeals of the State of New York, except that the following is to be omitted in printing:

(a). Notice of appeal from original order (folio 19).
(b). Original order appealed from (folio 22).
(c). Stipulation waiving certification (folio 104).
(d). Order of affirmance of Appellate Division (folio 115).
(e). Stipulation waiving certification (folio 127).

2. Remittitur of Court of Appeals, including amendment dated October 25, 1945.

3. Order of Chief Judge Loughran dated December 8, 1945 allowing appeal and petition for order allowing said appeal.

4. Assignment of errors.

5. Citation.

6. Statement of points to be relied on.

Dated: New York, January 28, 1946.

Yours, etc., George G. Lake, Attorney for Appellant Office & P. O. Address, 60 East 42nd Street, Borough of Manhattan, New York City.

[fols. 71-72] To: Hon. John J. Bennett, Jr., Corporation Counsel of the City of New York, Attorney for Appellee, Municipal Building, New York, N. Y. Hon. Charles Elmore Cropley, Clerk of the Supreme Court of the United States, Washington 13, D. C.

[fol. 73] [File endorsement omitted.]

[fol. 74] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—February 11, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Mr. Justice Jackson took no part in the consideration of this question.

[Endorsed on cover:] File No. 50,472. New York, Court of Appeals, Term No. 769. Queenside Hills Realty Co., Inc., Appellant, vs. William Wilson, as Commissioner of Housing and Buildings of the City of New York. Filed January 22, 1946. Term No. 769 O. T. 1945.